

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

January 27, 2000

Dear Xxxxx:

This letter is in response to your letter dated November 24, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is an independent sales agent for BUSINESS, a direct broadcast satellite service provider. In the summer of 1999, BUSINESS purchased all the subscribers of CORPORATION, a satellite service provider. COMPANY contracted with BUSINESS to remove CORPORATION equipment from customer homes and replace it with BUSINESS equipment enabling previous CORPORATION customers to receive BUSINESS programming. This is referred to as 'conversion' of a CORPORATION subscriber. The conversion process is as follows:

- BUSINESS dispatches to COMPANY a conversion work order automatically via their computerized customer billing system.
- At the same time that BUSINESS dispatches COMPANY a conversion work-order they ship to COMPANY the necessary equipment to be installed in the customer's home.
- BUSINESS will then invoice COMPANY for this equipment. BUSINESS felt they should invoice COMPANY for the equipment so COMPANY would have an economic interest in handling and tracking the equipment.
- Once the conversion is complete and the customer's account is activated within BUSINESS's billing system, BUSINESS will send payment via direct deposit in COMPANY's bank account. This payment reimburses COMPANY for the equipment that was installed and any labor and other material costs incurred during the conversion process.
- At this point, ownership of the equipment passes to BUSINESS. Each month, BUSINESS invoices their customers for programming and lease of this equipment. BUSINESS remits sales tax monthly based upon the rental of tangible personal property.

We believe that having accepted a resale certificate in good faith from BUSINESS that we have eliminated our exposure to any sales tax liability. In your opinion, who bears the burden of tax in this scenario and to what extent? Is the installation of satellite equipment an improvement to real estate or a sale of tangible personal property? Does it matter whether the installed equipment is leased or owned by the consumer and whether the consumer is a homeowner? Are we considered contractors or retailers by definition of state law? Are the incidental materials used during installation such as cable, telephone wire, etc...subject to use tax? Your prompt response will be greatly appreciated. If you should need any additional information, please feel free to call me at #####.

We are unclear as to what your contact with BUSINESS actually entails. Therefore, we are unable to give you a definitive answer regarding the tax obligations you may incur as a result of the contract. We hope the following general information is helpful to you.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201. Section 1 of the Retailers' Occupation Tax Act states, in part, as follows:

"Construction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price."

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.